

The Office accepted that on March 3, 2005 appellant, then a 44-year-old materials handler, sustained a crush injury and fracture of the distal phalanx of the right fifth finger when the digit became wedged between a metal plate and a metal bin. On the date of injury, appellant underwent debridement, nail bed repair, replacement of the nail plate and repair of the volar surface of the right fifth fingertip. Dr. Carl de los Reyes, an attending Board-certified plastic

surgeon, submitted progress notes through April 2005. He released appellant to full duty on May 4, 2005.

On April 5, 2007 appellant claimed a schedule award. The Office referred appellant to Dr. Bernard Portner, a Board-certified physiatrist, for a second opinion examination. In a May 10, 2007 report, Dr. Portner reviewed a history of injury and medical treatment, noting that appellant had reached maximum medical improvement. He related appellant's complaints of a constant residual achiness in the right fifth finger and discomfort with pinching and gripping. On examination, Dr. Portner found that the tip of the finger was partially missing, with mild deformity of the fingernail. Pinch strength using the thumb and fifth finger was diminished on the right. Appellant had full range of motion of all joints in the right fifth finger. Dr. Portner diagnosed a partial transverse sensory loss due to diminished pinprick sensation and two-point discrimination at six millimeters.

The Office referred the medical record to an Office medical adviser to determine the percentage of permanent impairment. In a July 27, 2007 report, an Office medical adviser reviewed Dr. Portner's report, noting that appellant reached maximum medical improvement as of May 1, 2006. Referring to the fifth edition of the American Medical Association, "*Guides to the Evaluation of Permanent Impairment*" (hereinafter, "A.M.A. *Guides*"), the medical adviser found that appellant had no impairment due to loss of motion. Regarding sensory deficit or pain, the medical adviser assessed a Grade 4 or 25 percent deficit according to Table 16-10, page 482.<sup>1</sup> She noted that the maximum percentage for ulnar nerve impairment was seven percent under Table 16-15, page 492.<sup>2</sup> The medical adviser multiplied the 7 percent impairment for the ulnar nerve by the 25 percent deficit grade, resulting in a 2 percent impairment of the right hand or right upper extremity according to Table 16-2, page 439,<sup>3</sup> or a 24 percent impairment of the right fifth finger according to Table 16-1, page 438.<sup>4</sup> She also assessed 10 percent impairment for partial transverse sensory loss in 20 percent of the digit length, according to Table 16-7, page 448.<sup>5</sup> Using the Combined Values Chart on page 604, the medical adviser calculated that appellant had a 32 percent impairment of the right fifth finger.

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<sup>1</sup> Table 16-10, page 482 of the fifth edition of the A.M.A., *Guides* is entitled "Determining Impairment of the Upper Extremity Due to Sensory Deficits or Pain Resulting From Peripheral Nerve Disorders."

<sup>2</sup> Table 16-15, page 492 of the fifth edition of the A.M.A., *Guides* is entitled "Maximum Upper Extremity Impairment Due to Unilateral Sensory or Motor Deficits or to *Combined* 100 percent Deficits of the Major Peripheral Nerves."

<sup>3</sup> Table 16-2, page 439 of the fifth edition of the A.M.A., *Guides* is entitled "Conversion of Impairment of the Hand to Impairment of the Upper Extremity."

<sup>4</sup> Table 16-1, page 438 of the fifth edition of the A.M.A., *Guides* is entitled "Conversion of the Digits to Impairment of the Hand."

<sup>5</sup> Table 16-7, page 448 of the fifth edition of the A.M.A., *Guides* is entitled "Digit Impairment for Transverse and Longitudinal Sensory Losses in *Index*, *Middle*, and *Ring Fingers* Based on the Percentage of Digit Length Involved."

By decision dated September 19, 2007, the Office granted appellant a schedule award for 32 percent permanent impairment of the right fifth finger. The period of the award ran from May 1 to June 3, 2006.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>6</sup> provides for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the Office as a standard for evaluation of schedule losses and the Board has concurred in such adoption.<sup>7</sup> As of February 1, 2001, schedule awards are calculated according to the fifth edition of the A.M.A., *Guides*, published in 2000.<sup>8</sup>

The standards for evaluation the permanent impairment of an extremity under the A.M.A., *Guides* are based on loss of range of motion, together with all factors that prevent a limb from functioning normally, such as pain, sensory deficit and loss of strength. All of the factors should be considered together in evaluating the degree of permanent impairment.<sup>9</sup> Chapter 16 of the fifth edition of the A.M.A., *Guides* provides a detailed grading scheme and procedures for determining impairments of the upper extremities due to pain, discomfort, loss of sensation, or loss of strength.<sup>10</sup>

### **ANALYSIS**

The Office accepted that appellant sustained a crush injury and fracture of the distal phalanx of the right fifth finger. The Office granted appellant a schedule award for 32 percent permanent impairment of the right fifth finger. The award was based on an Office medical adviser's interpretation of the May 10, 2007 findings of Dr. Portner, a Board-certified physiatrist and second opinion physician, who found that the tip of the right fifth finger was missing. Dr. Portner also observed a partial transverse sensory loss in the right fifth finger. The Office medical adviser assessed a 10 percent impairment for partial transverse sensory loss in 20 percent of the digit length, according to Table 16-7, page 448 of the A.M.A., *Guides*.

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<sup>6</sup> 5 U.S.C. §§ 8101-8193.

<sup>7</sup> *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

<sup>8</sup> See FECA Bulletin No. 01-05 (issued January 29, 2001) (schedule awards calculated as of February 21, 2001 should be evaluated according to the fifth edition of the A.M.A., *Guides*. Any recalculations of previous awards which result from hearings, reconsideration or appeals should, however, be based on the fifth edition of the A.M.A., *Guides* effective February 1, 2001).

<sup>9</sup> See *Paul A. Toms*, 28 ECAB 403 (1987).

<sup>10</sup> A.M.A. *Guides* 433-521, (5<sup>th</sup> ed. 2001), Chapter 16, "The Upper Extremities."

The Board notes that Table 16-7, entitled “Digit Impairment for Transverse and Longitudinal Sensory Losses in *Index, Middle, and Ring Fingers* Based on the Percentage of Digit Length Involved,” does not apply to the fifth or little finger. (Emphasis in the original). The fifth finger is addressed by Table 16-6, page 448, entitled “Digit Impairment for Transverse and Longitudinal Sensory Losses in *Thumb and Little Finger* Based on the Percentage of Digit Length Involved.” (Emphasis in the original.) Both Table 16-6 and 16-7 provide a 10 percent impairment for a total transverse loss of 20 percent of the digit length. Therefore, the Office medical adviser’s reference to Table 16-7 instead of Table 16-6 is not harmless error. However, the medical adviser did not explain why she assessed 10 percent impairment for total transverse loss whereas Dr. Portner only found a partial transverse loss. According to either Table 16-6 or 16-7, a partial transverse loss equals 5 percent impairment, not the 10 percent the medical adviser used in calculating the schedule award. The Board finds that this discrepancy requires clarification.

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.<sup>11</sup> Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in a proper manner. On remand, the Office should clarify whether appellant has a total or partial transverse sensory loss in the right fifth finger. Following any other development deemed necessary, the Office shall issue an appropriate decision.

### **CONCLUSION**

The Board finds that the case is not in posture for a decision. The case will be remanded to the Office for additional development regarding the appropriate percentage of permanent impairment of appellant’s right fifth finger.

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<sup>11</sup> *Jimmy A. Hammons*, 51 ECAB 219 (1999); *Marco A. Padilla*, 51 ECAB 202 (1999); *John W. Butler*, 39 ECAB 852 (1988).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 19, 2007 is set aside, and the case remanded to the Office for further development consistent with this decision.

Issued: May 1, 2008  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board